

Date Mailed January 16, 2001

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Administrative Rules Regarding Various Dispute Resolution
Procedures Under Federal and State Law

1-AC-181
Phase 1

FINAL ORDER ADOPTING RULES

The Public Service Commission of Wisconsin adopts an order to create ch. PSC 179, relating to telecommunications dispute resolution and whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement.

**ANALYSIS PREPARED BY THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Statutory authority: ss. 196.02(1) and (3), 196.199(2)(c), and 227.11(2), Stats.
Statutes interpreted: ss. 196.199(3) and 196.26(1)(a)3., Stats.

The federal Telecommunications Act of 1996 (Act) and 1993 Wisconsin Act 496 established the requirement that telecommunications service providers negotiate agreements with competitors that allow the competitors to interconnect with or use the provider's facilities and services in order for the competitors to provide telecommunications services to their customers. The Act also established procedures for negotiation, arbitration, and approval of agreements. Among other duties and responsibilities, state commissions were mandated to mediate, arbitrate, and approve interconnection agreements under the Act.

Courts have held, and s. 196.199(2)(a), Stats., provides, that the state also has the right to enforce existing agreements. As part of its enforcement power, the Commission may investigate whether a party to an interconnection agreement has failed to comply with the agreement. The statute establishes a procedure for the expedited investigation of complaints about a party's failure to comply with an interconnection agreement when the alleged failure has a significant adverse effect on the other party's ability to provide telecommunications service to its customers.

Section 196.199(2)(c), Stats., requires that the Commission promulgate rules specifying the requirements for determining whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the complaining party's ability to provide telecommunications services to its customers. This rule specifies the minimum factors that the Commission must consider when determining whether there is a significant adverse effect that justifies an expedited investigation. These factors include:

- The ability of customers or potential customers to obtain or continue to receive uninterrupted telecommunications service from the provider of his/her choice;
- Whether and to what degree any loss or damage due to an alleged failure to comply with the agreement can be remedied without an expedited proceeding under s. 196.199, Stats. This factor recognizes that there may be times when, for example, no amount of money can remedy the damage and times when, even if money can remedy the damage, only an expedited process can result in the remedy's being available soon enough;
- Whether either party is put in a better or worse business or financial position as a result of the failure to comply with the agreement; and
- The effect on competition.

Other statutory provisions require or allow the Commission to develop administrative rules concerning alternate dispute resolution and other issues involved in the enforcement of interconnection agreements. These remaining, broader areas of disputes between providers and alternate dispute resolution will be dealt with in rules proposed at a later date.

TEXT OF RULE

SECTION 1. Chapter PSC 179 is created to read:

Chapter PSC 179

TELECOMMUNICATIONS DISPUTE RESOLUTION

PSC 179.01	Purpose.
PSC 179.02	Definitions.
PSC 179.03	Significant adverse effect

PSC 179.01 Purpose. Chapter PSC 179 implements s. 196.199(2)(c), Stats., which requires the commission to specify by rule the requirements for determining in certain cases whether a party's alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers.

PSC 179.02 Definitions. In this chapter:

(1) "Commission" means the public service commission.

(2) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, telecommunications provider, governmental agency, or other entity which is provided with retail or wholesale telecommunications service, or both, by a party to an interconnection agreement. "Customer" does not include a party.

(3) "Essential telecommunications services" has the meaning given in s. PSC 160.03.

(4) “Interconnection agreement” means an agreement that is subject to approval by the commission under 47 USC 252(e), except that it does not include an agreement to which a commercial mobile radio service provider, as defined in s. 196.01(2g), Stats., is a party.

(5) “Party” means a signatory to a particular interconnection agreement.

(6) “Telecommunications provider” has the meaning given in s. 196.01(8p), Stats.

(7) “Telecommunications service” has the meaning given in s. 196.01(9m), Stats.

PSC 179.03 Significant adverse effect. In determining if a party’s alleged failure to comply with an interconnection agreement has a significant adverse effect on the ability of another party to provide telecommunications service to its customers or potential customers under s. 196.199(3)(a)1m.a., and in determining whether a complaint does or does not allege such a significant adverse effect under ss. 196.199(3)(a) and 196.26(1)(a)3., Stats., the commission shall consider at least all of the following factors:

(1) The ability of a customer or potential customer to obtain or continue to receive uninterrupted telecommunications service, especially essential telecommunications services, from the telecommunications provider of that customer’s choice.

(2) Whether and to what degree any loss or damage to an allegedly aggrieved party or its customer or potential customer resulting from the alleged failure to comply with an interconnection agreement can be remedied without an expedited proceeding under s. 196.199, Stats.

(3) Whether and to what degree the alleged failure to comply with an interconnection agreement does any of the following:

(a) Frustrates or enhances the planning or execution of a party’s business plan, marketing effort, or service or product introduction, or any combination thereof.

(b) Causes or threatens to cause a delay in or barrier to a party’s market entry or a delay in the growth of its market share, or both.

(c) Damages or threatens to damage the reputation of a party.

(d) Damages or threatens to damage the ability of a party to effectively compete.

(e) Harms or threatens to harm the financial health of a party.

(f) Favors a party’s obtaining or retaining of customers, or both.

These rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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